

COMPETENCY-BASED HIRING AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill amends provisions related to hiring principles for certain state and local government employees.

Highlighted Provisions:

This bill:

- ▶ precludes certain state and local government entities from requiring a minimum educational requirement for employment, except where educational qualifications are legally required to perform the duties of the position;
- ▶ requires certain state and local government entities to:
 - consider comparable experience or ability as equal to education when determining a candidate's satisfaction of minimum qualifications, with specific exceptions; and
 - ensure that job descriptions and job postings are based on the skills and competencies required to perform each job; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-3-1105, as last amended by Laws of Utah 2012, Chapter 321

11-13-225, as last amended by Laws of Utah 2018, Chapter 200

17-28-2.4, as enacted by Laws of Utah 1992, Chapter 115

17-28-2.6, as last amended by Laws of Utah 2001, Chapter 73

17-33-3, as last amended by Laws of Utah 2001, Chapter 73

17-33-5, as last amended by Laws of Utah 2009, Chapter 128

33 **17B-1-803**, as renumbered and amended by Laws of Utah 2007, Chapter 329

34 **67-19-3.1**, as last amended by Laws of Utah 2010, Chapter 249

35

36 *Be it enacted by the Legislature of the state of Utah:*

37 Section 1. Section **10-3-1105** is amended to read:

38 **10-3-1105. Municipal employees -- Duration and termination of employment --**
39 **Exceptions -- Merit principles.**

40 (1) (a) Except as provided in Subsection (1)(b) or (2), each employee of a municipality
41 shall hold employment without limitation of time, being subject to discharge, suspension of
42 over two days without pay, or involuntary transfer to a position with less remuneration only as
43 provided in Section 10-3-1106.

44 (b) Subsection (1)(a) does not apply to an employee who is discharged or involuntarily
45 transferred to a position with less remuneration if the discharge or involuntary transfer is the
46 result of a layoff or reorganization.

47 (2) Subsection (1)(a) does not apply to:

48 (a) subject to Subsection (3), a person appointed by the mayor, city manager, or other
49 person or body with the power to appoint in the municipality if:

50 (i) the appointment is made in writing;

51 (ii) the person's written job description identifies the person's position as exempt from
52 the protections described in Subsection (1)(a); and

53 (iii) the position is described in an ordinance as exempt from the protections described
54 in Subsection (1)(a);

55 (b) a member of the municipality's police department or fire department who is a
56 member of the classified civil service in a first or second class city;

57 (c) a person who holds a position described in Subsections (2)(c)(i) through (xii) or an
58 equivalent position designated in a municipal ordinance or personnel policy:

59 (i) a police chief of the municipality;

60 (ii) a deputy or assistant police chief of the municipality;

61 (iii) a fire chief of the municipality;

62 (iv) a deputy or assistant fire chief of the municipality;

63 (v) a head of a municipal department or division;

(vi) a deputy of a head of a municipal department or division;

(vii) a superintendent;

(viii) a probationary employee of the municipality;

(ix) a part-time employee of the municipality, including paid call firefighters;

(x) a seasonal or temporary employee of the municipality;

(xi) a person who works in the office of an elected official; or

(xii) a secretarial or administrative assistant support position that is specifically designated as a position to assist an elected official or the head or deputy head of a municipal department;

(d) an individual appointed to a position under Part 9, Appointed Officials and Their Duties, including:

(i) the city engineer;

(ii) the city recorder;

(iii) the city treasurer; or

(iv) the city attorney; or

(e) an employee who has:

(i) acknowledged in writing that the employee's employment status is appointed or at-will; or

(ii) voluntarily waived the procedures required by Section 10-3-1106.

(3) In addition to the persons described in Subsections (2)(b) through (e), a municipality may appoint up to 5% of the municipality's workforce in accordance with Subsection (2)(a).

(4) Nothing in this section or Section 10-3-1106 may be construed to limit a municipality's ability to define cause for an employee termination or reduction in force.

(5) A municipality may not prescribe a minimum educational requirement for employment except when a minimum educational qualification is legally required to perform the duties of the position.

(6) A municipality shall:

(a) consider comparable experience or ability as equal to education in determining a candidate's satisfaction of minimum qualifications, except when a minimum educational qualification is legally required to perform the duties of the position; and

(b) ensure that the municipality's position descriptions and job postings for employee positions are based on the specific skills and competencies required to perform those jobs.

Section 2. Section **11-13-225** is amended to read:

11-13-225. Establishment of interlocal entity personnel system -- Merit principles.

(1) An interlocal entity shall establish a system of personnel administration for the interlocal entity as provided in this section.

(2) The interlocal entity shall administer the system described in Subsection (1) in a manner that will effectively provide for:

(a) recruiting, selecting, and advancing employees on the basis of the employee's relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment;

(b) equitable and adequate compensation;

(c) employee training as needed to assure high-quality performance;

(d) (i) retaining an employee on the basis of the adequacy of the employee's performance; and

(ii) separation of an employee whose inadequate performance cannot be corrected;

(e) fair treatment of an applicant or employee in all aspects of personnel administration without regard to race, color, religion, sex, national origin, political affiliation, age, or disability, and with proper regard for the applicant's or employee's privacy and constitutional rights; and

(f) a formal procedure for processing the appeals and grievances of an employee without discrimination, coercion, restraint, or reprisal.

(3) An interlocal entity may not prescribe a minimum educational requirement for employment, except when a minimum educational qualification is legally required to perform the duties of the position.

(4) An interlocal entity shall:

(a) consider comparable experience or ability as equal to education in determining a candidate's satisfaction of minimum qualifications, except when a minimum educational qualification is legally required to perform the duties of the position; and

(b) ensure that position descriptions and job postings published for employee positions are based on the specific skills and competencies required to perform those jobs.

126 ~~[(3)]~~ (5) An interlocal entity shall ensure that any employee training described in
127 Subsection (2)(c) complies with Title 63G, Chapter 22, State Training and Certification
128 Requirements.

129 Section 3. Section **17-28-2.4** is amended to read:

130 **17-28-2.4. County Fire Civil Service System rules and policies.**

131 (1) The executive director shall recommend rules and policies for the County Fire Civil
132 Service System, which shall be subject to approval by the county legislative body.

133 (2) ~~[(The)]~~ Subject to Section 17-28-2.6, the County Fire Civil Service System rules
134 shall provide for recruiting activities, including the recruiting of minorities and women,
135 job-related minimum requirements, selection procedures, certification procedures,
136 appointments, probationary periods, promotion, position classification, recordkeeping,
137 reductions in force, grievances and complaints, disciplinary action, work hours, holidays, and
138 other necessary and proper requirements not inconsistent with this chapter.

139 (3) The executive director shall publish or cause to be published these rules and
140 policies in a manual form, to be updated regularly and made available to fire department
141 employees.

142 Section 4. Section **17-28-2.6** is amended to read:

143 **17-28-2.6. Merit principles.**

144 (1) The County Fire Civil Service System shall be established and administered in a
145 manner that will provide for the effective implementation of the following merit principles:

146 ~~[(1)]~~ (a) recruiting, selecting, and advancing employees on the basis of their relative
147 ability, knowledge, and skills, including open consideration of qualified applicants for initial
148 appointment;

149 ~~[(2)]~~ (b) provision of equitable and adequate job classification and compensation
150 systems, including pay and benefits programs;

151 ~~[(3)]~~ (c) training of employees as needed to assure high-quality performance;

152 ~~[(4)]~~ (d) retention of employees on the basis of the adequacy of their performance and
153 separation of employees whose inadequate performance cannot be corrected;

154 ~~[(5)]~~ (e) fair treatment of applicants and employees in all aspects of personal
155 administration without regard to race, color, religion, sex, national origin, political affiliation,
156 age, or disability, and with proper regard for their privacy and constitutional rights as citizens;

157 ~~[(6)]~~ (f) provision of information to employees regarding their political rights and
158 prohibited practices under the Hatch Act; and

159 ~~[(7)]~~ (g) provision of a formal procedure for processing the appeals and grievances of
160 employees without discrimination, coercion, restraint, or reprisal.

161 (2) The County Fire Civil Service System may not prescribe a minimum educational
162 requirement for employment, except when a minimum educational qualification is legally
163 required to perform the duties of the position.

164 (3) The County Fire Civil Service System shall:

165 (a) consider comparable experience or ability as equal to education in determining a
166 candidate's satisfaction of minimum qualifications, except when a minimum educational
167 qualification is legally required to perform the duties of the position; and

168 (b) ensure that position descriptions and job postings published for employee positions
169 are based on the specific skills and competencies required to perform those jobs.

170 (4) The principles in Subsections (1) through (3) shall govern the creation of rules and
171 policies under Section 17-28-2.4.

172 Section 5. Section **17-33-3** is amended to read:

173 **17-33-3. Merit principles.**

174 (1) It is the policy of this state that each county may establish a personnel system
175 administered in a manner that will provide for the effective implementation of the following
176 merit principles:

177 ~~[(1)]~~ (a) recruiting, selecting, and advancing employees on the basis of their relative
178 ability, knowledge, and skills, including open consideration of qualified applicants for initial
179 appointment;

180 ~~[(2)]~~ (b) provision of equitable and adequate compensation;

181 ~~[(3)]~~ (c) training of employees as needed to assure high-quality performance;

182 ~~[(4)]~~ (d) retention of employees on the basis of the adequacy of their performance, and
183 separation of employees whose inadequate performance cannot be corrected;

184 ~~[(5)]~~ (e) fair treatment of applicants and employees in all aspects of personnel
185 administration without regard to race, color, religion, sex, national origin, political affiliation,
186 age, or disability, and with proper regard for their privacy and constitutional rights as citizens;

187 ~~[(6)]~~ (f) provision of information to employees regarding their political rights and

188 prohibited practices under the Hatch Act; and

189 ~~[(7)]~~ (g) provision of a formal procedure for processing the appeals and grievances of
190 employees without discrimination, coercion, restraint, or reprisal.

191 (2) A county may not prescribe a minimum educational requirement for employment,
192 except when a minimum educational qualification is legally required to perform the duties of
193 the position.

194 (3) A county shall:

195 (a) consider comparable experience or ability as equal to education in determining a
196 candidate's satisfaction of minimum qualifications, except when a minimum educational
197 qualification is legally required to perform the duties of the position; and

198 (b) ensure that the county's position descriptions and job postings for employee
199 positions are based on the specific skills and competencies required to perform those jobs.

200 (4) The principles in Subsections (1) through (3) shall govern the creation of personnel
201 rules under Section 17-33-5.

202 Section 6. Section **17-33-5** is amended to read:

203 **17-33-5. Office of personnel management -- Director -- Appointment and**
204 **responsibilities -- Personnel rules.**

205 (1) (a) (i) Each county executive shall:

206 (A) create an office of personnel management, administered by a director of personnel
207 management; and

208 (B) ensure that the director is a person with proven experience in personnel
209 management.

210 (ii) Except as provided in Subsection (1)(b), the position of director of personnel
211 management shall be:

212 (A) a merit position; and

213 (B) filled as provided in Subsection (1)(a)(iii).

214 (iii) Except as provided in Subsection (1)(b), the career service council shall:

215 (A) advertise and recruit for the director position in the same manner as for merit
216 positions;

217 (B) select three names from a register; and

218 (C) submit those names as recommendations to the county legislative body.

(iv) Except as provided in Subsection (1)(b), the county legislative body shall select a person to serve as director of the office of personnel management from the names submitted to it by the career service council.

(b) (i) Effective for appointments made after May 1, 2006, and as an alternative to the procedure under Subsections (1)(a)(ii), (iii), and (iv) and at the county executive's discretion, the county executive may appoint a director of personnel management with the advice and consent of the county legislative body.

(ii) The position of each director of personnel management appointed under this Subsection (1)(b) shall be a merit exempt position.

(iii) A director of personnel management appointed under this Subsection (1)(b) may be terminated by the county executive with the consent of the county legislative body.

(2) The director of personnel management shall:

(a) encourage and exercise leadership in the development of expertise in personnel administration within the several departments, offices, and agencies in the county service and make available the facilities of the office of personnel management to this end;

(b) advise the county legislative and executive bodies on the use of human resources;

(c) develop and implement programs for the improvement of employee effectiveness, such as training, safety, health, counseling, and welfare;

(d) investigate periodically the operation and effect of this law and of the policies made under it and report findings and recommendations to the county legislative body;

(e) establish and maintain records of all employees in the county service, setting forth as to each employee class, title, pay or status, and other relevant data;

(f) make an annual report to the county legislative body and county executive regarding the work of the department; and

(g) apply and carry out this law and the policies under it and perform any other lawful acts that are necessary to carry out the provisions of this law.

(3) (a) (i) The director shall recommend personnel rules for the county.

(ii) The county legislative body may:

(A) recommend personnel rules for the county; and

(B) approve, amend, or reject personnel rules before they are adopted.

(b) ~~[The]~~ Subject to Section 17-33-3, the rules shall provide for:

(i) recruiting efforts to be planned and carried out in a manner that assures open competition, with special emphasis to be placed on recruiting efforts to attract minorities, women, persons with a disability as defined by and covered under the Americans with Disabilities Act of 1990, 42 U.S.C. 12102, or other groups that are substantially underrepresented in the county work force to help assure they will be among the candidates from whom appointments are made;

(ii) the establishment of job related minimum requirements wherever practical, that all successful candidates shall be required to meet in order to be eligible for consideration for appointment or promotion;

(iii) selection procedures that include consideration of the relative merit of each applicant for employment, a job related method of determining the eligibility or ineligibility of each applicant, and a valid, reliable, and objective system of ranking eligible applicants according to their qualifications and merit;

(iv) certification procedures that ~~insure~~ ensure equitable consideration of an appropriate number of the most qualified eligible applicants based on the ranking system;

(v) appointments to positions in the career service by selection from the most qualified eligible applicants certified on eligible lists established in accordance with Subsections (3)(b)(iii) and (iv);

(vi) noncompetitive appointments in the occasional instance where there is evidence that open or limited competition is not practical, such as for unskilled positions that have no minimum job requirements;

(vii) limitation of competitions at the discretion of the director for appropriate positions to facilitate employment of qualified applicants with a substantial physical or mental impairment, or other groups protected by Title VII of the Civil Rights Act;

(viii) permanent appointment for entry to the career service that shall be contingent upon satisfactory performance by the employee during a period of six months, with the probationary period extendable for a period not to exceed six months for good cause, but with the condition that the probationary employee may appeal directly to the council any undue prolongation of the period designed to thwart merit principles;

(ix) temporary, provisional, or other noncareer service appointments, which may not be used as a way of defeating the purpose of the career service and may not exceed 270 days;

(x) lists of eligible applicants normally to be used, if available, for filling temporary positions, and short term emergency appointments to be made without regard to the other provisions of law to provide for maintenance of essential services in an emergency situation where normal procedures are not practical, these emergency appointments not to exceed 270 days;

(xi) promotion and career ladder advancement of employees to higher level positions and assurance that all persons promoted are qualified for the position;

(xii) recognition of the equivalency of other merit processes by waiving, at the discretion of the director, the open competitive examination for placement in the career service positions of those who were originally selected through a competitive examination process in another governmental entity, the individual in those cases, to serve a probationary period;

(xiii) preparation, maintenance, and revision of a position classification plan for all positions in the career service, based upon similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for, and the same schedule of pay may be equitably applied to, all positions in the same class, the compensation plan, in order to maintain a high quality public work force, to take into account the responsibility and difficulty of the work, the comparative pay and benefits needed to compete in the labor market and to stay in proper alignment with other similar governmental units, and other factors;

(xiv) keeping records of performance on all employees in the career service and requiring consideration of performance records in determining salary increases, any benefits for meritorious service, promotions, the order of layoffs and reinstatements, demotions, discharges, and transfers;

(xv) establishment of a plan governing layoffs resulting from lack of funds or work, abolition of positions, or material changes in duties or organization, and governing reemployment of persons so laid off, taking into account with regard to layoffs and reemployment the relative ability, seniority, and merit of each employee;

(xvi) establishment of a plan for resolving employee grievances and complaints with final and binding decisions;

(xvii) establishment of disciplinary measures such as suspension, demotion in rank or grade, or discharge, measures to provide for presentation of charges, hearing rights, and appeals for all permanent employees in the career service to the career service council;

- (xviii) establishment of a procedure for employee development and improvement of poor performance;
- (xix) establishment of hours of work, holidays, and attendance requirements in various classes of positions in the career service;
- (xx) establishment and publicizing of fringe benefits such as insurance, retirement, and leave programs; and
- (xxi) any other requirements not inconsistent with this law that are proper for its enforcement.

Section 7. Section **17B-1-803** is amended to read:

17B-1-803. Merit principles.

(1) A local district may establish a personnel system administered in a manner that will provide for the effective implementation of merit principles that provide for:

- ~~[(1)]~~ (a) recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment;
- ~~[(2)]~~ (b) providing equitable and adequate compensation;
- ~~[(3)]~~ (c) training employees as needed to assure high-quality performance;
- ~~[(4)]~~ (d) retaining employees on the basis of the adequacy of their performance, and separation of employees whose inadequate performance cannot be corrected;
- ~~[(5)]~~ (e) fair treatment of applicants and employees in all aspects of personnel administration without regard to race, color, religion, sex, national origin, political affiliation, age, or disability, and with proper regard for their privacy and constitutional rights as citizens;
- ~~[(6)]~~ (f) providing information to employees regarding their political rights and prohibited practices under the Hatch Political Activities Act, 5 U.S.C. Sec. 1501 through 1508 et seq.; and
- ~~[(7)]~~ (g) providing a formal procedure for processing the appeals and grievances of employees without discrimination, coercion, restraint, or reprisal.

(2) A local district may not prescribe a minimum educational requirement for employment, except when a minimum educational qualification is legally required to perform the duties of the position.

(3) A local district shall:

(a) consider comparable experience or ability as equal to education in determining a candidate's satisfaction of minimum qualifications, except when a minimum educational qualification is legally required to perform the duties of the position; and

(b) ensure that the local district's position descriptions and job postings for employee positions are based on the specific skills and competencies required to perform those jobs.

Section 8. Section **67-19-3.1** is amended to read:

67-19-3.1. Principles guiding interpretation of chapter and adoption of rules -- Merit principles.

(1) The department shall establish a career service system designed in a manner that will provide for the effective implementation of the following merit principles:

(a) recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment;

(b) providing for equitable and competitive compensation;

(c) training employees as needed to assure high-quality performance;

(d) retaining employees on the basis of the adequacy of their performance and separating employees whose inadequate performance cannot be corrected;

(e) fair treatment of applicants and employees in all aspects of human resource administration without regard to race, color, religion, sex, national origin, political affiliation, age, or disability, and with proper regard for their privacy and constitutional rights as citizens;

(f) providing information to employees regarding their political rights and the prohibited practices under the Hatch Act; and

(g) providing a formal procedure for advancing grievances of employees:

(i) without discrimination, coercion, restraint, or reprisal; and

(ii) in a manner that is fair, expeditious, and inexpensive for the employee and the agency.

(2) The career service system described in Subsection (1) may not prescribe a minimum educational requirement for employment, except when a minimum educational qualification is legally required to perform the duties of the position.

(3) As part of the career service system described in Subsection (1), the department shall:

374 (a) consider comparable experience or ability as equal to education in determining a
375 candidate's satisfaction of minimum qualifications, except when a minimum educational
376 qualification is legally required to perform the duties of the position; and

377 (b) ensure that position descriptions and job postings published by agencies for career
378 service positions are based on the specific skills and competencies required to perform those
379 jobs.

380 ~~[(2)]~~ (4) The principles in ~~[Subsection]~~ Subsections (1) through (3) shall govern
381 interpretation and implementation of this chapter.